

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )

Amendment Of Rules Governing Procedures )  
To Be Followed When Formal Complaints Are )  
Filed Against Common Carriers )  
\_\_\_\_\_ )

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CC Docket No. 96-238

REPLY TO OPPOSITION TO AT&T CORP.'S PETITION FOR CLARIFICATION

Pursuant to Section 1.429 of the Commission's Rules, AT&T Corp. ("AT&T") hereby replies to the opposition to its petition for clarification filed by the Telecommunications Resellers Association ("TRA").

AT&T's petition requested that the Commission clarify its Report and Order<sup>1</sup> ("Order") in this proceeding in one respect: To facilitate the settlement of disputes prior to the filing of formal complaints, the Order requires a complainant to "mail a certified letter outlining the allegations that form the basis of the complaint it anticipates filing with the Commission to the defendant carrier that invites response within a reasonable period of time."<sup>2</sup> However, the Order does not indicate the representative of the defendant carrier to whom a complainant must send its

<sup>1</sup> See Report and Order, Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, FCC 97-396, released November 25, 1997 ("Order").

<sup>2</sup> Id., ¶ 41; see also 47 C.F.R. § 1.721(a)(8).

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pre-filing letter, and the service provisions of the new complaint rules state only that service “may be made” on a common carrier by serving its designated agent in the District of Columbia.<sup>3</sup> To permit meaningful settlement discussions prior to the initiation of complaint proceedings, and to prevent would-be complainants from attempting to “game” the new rules by sending pre-filing letters to a general “mail drop” address, AT&T’s petition requested that the Commission clarify that pre-filing letters must be delivered to both (i) the defendant carrier’s designated agent in the District of Columbia, and (ii) the defendant’s representative that, to the best of the complainant’s knowledge, has decision making authority over the disputed matters or has been designated as the defendant’s attorney regarding those matters.

Two parties offered comments on AT&T’s petition. Bell Atlantic supports AT&T’s requested clarification,<sup>4</sup> while TRA opposes the second prong of AT&T’s proposal on the purported grounds that “it will often be difficult or impossible for a complainant carrier to refute a defendant carrier’s assertion of procedural infirmity” if a defendant claims that a pre-filing letter was not properly served.<sup>5</sup> TRA’s claim simply cannot be credited.

The standard AT&T proposes is neither burdensome nor difficult to interpret. As AT&T showed in its petition, in most cases a complainant already will have engaged in

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<sup>3</sup> 47 C.F.R. § 1.47(h) (emphasis added). Section 1.735(d) of the rules does require service of complaints on a defendant’s registered agent, but that provision does not expressly apply to pre-filing letters.

<sup>4</sup> See Bell Atlantic, p. 5.

<sup>5</sup> TRA, p. 10. TRA does not appear to object to AT&T’s request that the Commission clarify that pre-filing letters must be served on a carrier’s designated agent in the District of Columbia.

discussions with particular defendant personnel (e.g., an account representative) as part of some disputed course of dealing. AT&T did not propose that a complainant must send a pre-filing letter to the person who actually has decision making authority; merely that they serve “the defendant representative whom they reasonably believe to be responsible for the matter in question.”<sup>6</sup> This is not a difficult standard to satisfy. In essence, a complainant need only send its pre-filing letter to the defendant representative with whom it has already discussed, or attempted to discuss, the matter in question.

Nor would this requirement lend itself to procedural manipulation by defendants. Under AT&T’s proposal, in order to win a claim that service of a pre-filing letter was procedurally defective, a defendant essentially would be required to show that a complainant had failed to make a reasonable effort to identify the proper recipient of its letter -- the same person with whom the complainant had been engaged in discussions. Such failure would plainly imply that the complainant had failed to satisfy the Commission’s requirement that it “discussed, or attempted in good faith to discuss, the possibility of settlement with the opposing party prior to the filing of the complaint.”<sup>7</sup> TRA’s claim that AT&T’s proposal would become “a routine matter of contention”<sup>8</sup> presumes that the Commission’s staff will be unable to make such basic determinations, or would be unwilling to discipline defendants who file frivolous motions. In fact,

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<sup>6</sup> AT&T Petition, p. 3.

<sup>7</sup> Order, ¶ 41. In that event, the Commission should be fully prepared to penalize offending complainants in order to maintain the integrity of its new complaint regime.

<sup>8</sup> TRA, p. 11.

the new rules grant Commission attorneys “considerable discretion” to adapt procedures so as to ensure “the full and fair resolution of disputes in the most expeditious manner possible.”<sup>9</sup>

Finally, TRA claims that defendants should be able to determine the appropriate personnel within their organization to whom to forward pre-filing letters because those letters will be sufficiently detailed to permit identification of those individuals.<sup>10</sup> As a preliminary matter, if a complainant has in fact prepared a detailed pre-filing letter, then it should have some knowledge of the defendant’s representative with whom its own personnel have been dealing, and can easily route a copy of its letter to that person.<sup>11</sup>

More importantly, TRA’s claim simply misses the point. The minimal burden AT&T’s proposed clarification would place on complainants is greatly outweighed by the benefits of facilitating settlement discussions. Indeed, the entire purpose of the pre-filing letter requirement is to permit resolution of disputes outside the formal complaint process. At bottom, TRA complains that it does not want to give potential defendants an “edge” by allowing them to more readily respond to pre-filing letters. This argument incorrectly presumes that such letters are merely prerequisites to complaint filings. Instead, pre-filing letters were intended as an important dispute resolution tool, and AT&T’s proposed clarification will significantly further the achievement of that goal.

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<sup>9</sup> Order, ¶ 5.

<sup>10</sup> See TRA, p. 11.

<sup>11</sup> It also bears noting that to the extent a pre-filing letter is not sufficiently detailed, it also could become the subject of precisely the kind of procedural wrangling that TRA claims it seeks to avoid. Clearly, the Commission’s new rules presume that its staff can manage and control efforts to “game” its procedures.

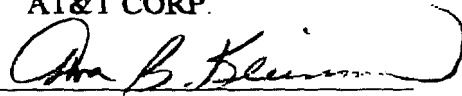
CONCLUSION

For the reasons discussed above and in AT&T's petition, the Commission should clarify the pre-filing letter requirement of 1.721(a)(8) of its rules in the manner AT&T requests.

Respectfully submitted,

AT&T CORP.

By



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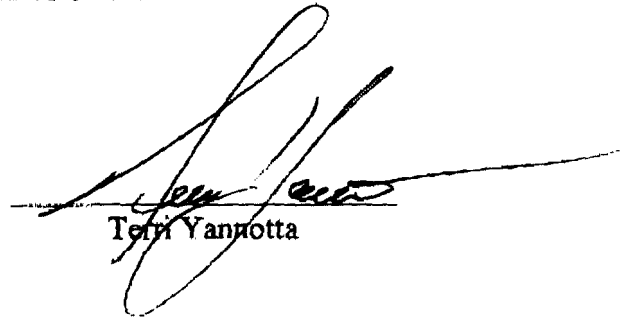
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April 1, 1998

**CERTIFICATE OF SERVICE**

I, Terri Yannotta, do hereby certify that on this 1<sup>st</sup> day of April, 1998, a copy of the foregoing "Reply To Opposition To AT&T Corp.'s Petition For Clarification" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.



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April 1, 1998

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